***THE HONOURABLE SRI JUSTICE B.SESHASAYANA REDDY**

+ WRIT PETITION NO.8102 OF 2003

% 18-10-2005

Mahesh Cooperative Housing Society Ltd.,

Secunderabad. …….. PETITIONER

VS.

$ The Special Officer and Competent

Authority, ULC, Hyderabad and others……. RESPONDENTS

! Counsel for the Petitioner: MR.P.M.GOPAL RAO

^ Counsel for the Respondents 1-4: Government Pleader for REVENUE

Counsel for the Respondents 5-6: Mr.L.Prabhakar Reddy, Advocate

Counsel for the Respondents 7-14: Mr.Shashi Bhaskar, Advocate.

< Gist:

> Head Note:

? CITATIONS:

1. 2002(4)ALT 334(DB)
2. (1995) 1 SCC 295
3. (1996) 3 SCC 282
4. 1996(2) ALT 557 (DB)

COMPUTER NO.

-

-

-

-

THE HONOURABLE SRI JUSTICE

B.SESHASAYANA REDDY

WRIT PETITION NO.8102 OF 2003

DISPOSED OF ON 18-10-2005

BETWEEN:

Mahesh Cooperative Housing Society Ltd.,

Secunderabad. …….. PETITIONER

And

The Special Officer and Competent

Authority, ULC, Hyderabad and others……. RESPONDENTS

THE HONOURABLE SRI JUSTICE

B.SESHASAYANA REDDY

WRIT PETITION NO.8102 OF 2003

O R D E R :

1. This writ petition has been filed by Mahesh Cooperative Housing Society Limited, represented by its President Sri.G.V. Ramakrishna Rao with a prayer to issue a writ of mandamus declaring the order dated 2.7.2002 of Commissioner (Appeals)- 2nd respondent in proceedings No.Hyd/46 to 48/92 affirming the order of the Special Officer and Competent Authority, ULC, Hyderabad- 1st respondent dated 25.8.1990 as null and void. A further relief is sought for to direct the 1st respondent to consider the application in Form No.5 dated 16.9.1976 in accordance with law and assign the land in Sy.No.124 admeasuring Ac.8-32 guntas of Lalaguda village, Secunderabad to the petitioner-society under Sec.23 of the Urban Land (Ceiling and Regulation) Act, 1976 r/w G.O.Ms.No.455, Rev.(U.C.I.) Department, dated 29.7.2002 and G.O.Ms.No.1069 Rev.(U.C.I.) Department, dated 7.12.2002.

2. Aknoor Durgaiah, s/o Rajaiah, P.mallaiah, S/o P.Pedaramaiah and T.Rajalingam, S/o Veeraiah of Lalaguda, Secunderabad, are owners of the land bearing S.No.124 admeasuring Ac.9-20 guntas equivalent to 38,445.20 square meters. Apart from the land bearing S.No.124, they also owned lands bearing S.Nos.130, 131, 159 and 160. They filed statements in Form-1 u/s 6(1) of Urban Land (Ceiling and Regulation) Act, 1976 (for short ULC Act) declaring the lands held by them. After due enquiry, draft statements under section 8(1) and notice u/s 8(3) of ULC Act came to be issued to the declarants determining the surplus area held by them. They filed objections to the draft statements. The Special Officer and Competent Authority-1st respondent on considering the objections and on hearing the counsel appearing on behalf of the declarants found them to be holding the land in excess over the ceiling limit. The extent of excess land held by each of the declarants is not required to be detailed for the disposal of this case. The declarants filed appeals before the Commissioner(Appeals)-2nd respondent. Their appeals ended in dismissal. Pending finalization of the proceedings under ULC Act, the declarants entered into agreements of sale with the petitioner-society. Indeed the petitioner-society sought for its impleadment as necessary party to the appeals preferred by the declarants. The appellate authority had taken note of the objections raised by the petitioner-

society while disposing of the appeals filed by the declarants. I deem it appropriate to refer the relevant portion of the order passed by the appellate authority-2nd respondent and it is thus:

" ….In the mean while, Sri.A.Durgaiah and others on behalf of the Maheswari Cooperative Housing Society has entered into an agreement with the declarants and later obtained an irrevocable Power of Attorney from the declarants for the land Ac.8-32 guntas in S.No.124 of Lalaguda(V) and requested to implead them as necessary parties to the Appeals Hyd/46 to 48/92 for defending their case."

3. The declarants/appellants as well as the petitioner-Society contended before the appellate authority that land in S.No.124 of Lalaguda village cannot be treated as vacant land within the meaning of ULC Act. Their contention was negatived by the appellate authority. Para 3 of the order in appeals reads as follows:

" 3. The perusal of Collector, Hyderabad D.O.letter dt.28.12.1997 reveals that, Sy.Nos.124 and 123 of Lalaguda village are popularly known as Errakunta since there was water body on the grounds, but the same are being converted into layout unauthorisedly. Hence, the lands in Sy.No.124 are not in the nature of non-vacant and the competent authority has correctly treated the lands as vacant and computed in the holding of the declarant. Hence, the plea raised is not tenable."

4. The controversy with regard to treating the land in S.No.124 as vacant land is set at rest with the order dated 2.7.2002 passed by the appellate authority so far as the declarant are concerned since they did not choose to question the order passed by the appellate authority. It is only the agreement holder who is the writ petitioner has chosen to approach this court by invoking the jurisdiction under Article 226 of the Constitution of India with a prayer stated supra. I make myself clear that the total extent in S.No.124 is Ac.9-20 guntas. The petitioner claims to have purchased Ac.8.32 guntas in S.No.124 under agreements of sale from the declarants. The petitioner also filed O.S.No.211 of 1998 on the file of III Senior Civil Judge, CCS, Secunderabad for specific performance of agreements of sale. The suit was filed not

only against the landholders but also against the subsequent purchasers. The agreements of sale referred to in their plaint are dated 6.8.79 and 22.7.81. The petitioner also pressed into service irrevocable GPA executed by the landholders on 22.7.1981.

5. Notification u/s 10(1) declaring the surplus lands held by the land holders came to be issued on 17.7.1999 and Sec.10(3) notification came to be published in the official gazette on 19.10.1991. These two dates could be known from the plaint pleadings of the petitioner-society in O.S.No.211 of 1998. The relevant portion of the plaint reads as under:

> " The land was vacant and partly inundated. It was also declared as vacant land by ULC Authority, Hyderabad and verified as such and was also determined by order of the Competent Authority dated 25.8.1990 in F2/13518/76 and 56 to 58 of 1983 to be surplus vacant land liable to be surrendered. Statement under Section 9(1) of the ULC Act was issued. Sec.10(1) notification was issued on 17.7.91 and 10(3) was issued on 19.10.1991. Proceedings for taking over was stayed pending appeal. The appeal was dismissed on 2.7.2002. Section 10(5) notice was issued on 26.9.2002 under ULC Act. Change of the land use or sales cannot be done pending the proceedings. Any sale in favour of defendants 11 to 20 or of others either with fictitious house numbers without approved layout or under notarized agreements of sales is null and void under Section 5(3) and Section 10(4) of ULC Act. They are nonest and create no right. They are created to defeat the provisions of the Act."

6. The petitioner-society challenges the orders of respondents 1 and 2 on the ground that S.No.124 cannot be treated as vacant land since it is earmarked partly for agriculture and partly for water body. Another ground urged is that pending application of the petitioner for exemption, further proceedings under ULC Act ought to have been stayed.

7. R5 and R6 came on record as per orders of this court in WPMP.No.1613 of 2005. 5th respondent claims to have purchased 1142 square yards under registered sale

deed bearing No.1481/95 for consideration of Rs.3,42,000/- and 6th respondent claims to have purchased 710 square yards for a consideration of Rs.1,77,500/- under registered sale deed dated 30.3.1995 from the landholders. They also claimed to have made applications on 11.11.2003 and 29.4.2004 for regularization of their possession. R-7 to R-14 came on record as per orders in WPMP.No.148 of 2005. They claim to have purchased house plots from landholders and constructed houses and their houses came to be assessed for tax by the Municipal Corporation of Hyderabad. They also claimed to have submitted applications on 11.11.2003 and 29.5.2004 for regularization of their possession. They filed W.P.Nos.9045, 9065, 9067 of 2003 and batch when the respondents therein tried to demolish the constructions put up by them. All the writ petitions came to be disposed of under a common order dated 1.8.2003. The operative portion of the common order dated 1.8.2003 reads as follows:

> " Therefore, this Court is also of the opinion that Mandal Revenue Officer should take necessary steps to protect the land. For doing so, it is always open to the revenue authorities to prohibit and prevent any further construction by third parties. The petitioners herein shall not create any third party rights and shall not make further construction. It is open to the petitioners to raise compound walls, if necessary, after informing the Mandal Revenue Officer. The respondents shall take necessary action as observed herein above within a period of four months from the date of receipt of a copy of this order."

The common order dated 1.8.2003 passed in W.P.No.9045 of 2003 and batch came to be challenged in W.A.No.1195 of 2004. The petitioner herein also filed application seeking leave to file appeal against the common order alleging that its rights are adversely affected. Their applications seeking leave came to be dismissed by order dated 3-8-2004. Para 10 of the order reads as under:

> " 10. Insofar as the applicants who have sought special leave of the court to file appeals against the impugned order on ground that by the impugned order their rights are adversely affected, we do not find any ground to grant leave to them to challenge the impugned order since they are not remediless to seek appropriate remedy against the respective writ petitioners in a civil court."

8. Respondents 1 and 2 filed counter affidavit. The counter affidavit in brief is :

The petitioner-society purchased the land from the original declarants while the proceedings in respect of the declarations filed by landholders are pending before the 1st respondent. The alienation made in favour of the petitioner-Society is in violation of the provisions of ULC Act and as such and it does not confer any legal right or title on the petitioner- society. As per master plan, the land in S.No.124 is classified as agricultural land and part of the same is also classified as water body. But the declarants changed the nature and use of the land and converted it into housing plots and disposed of the housing plots in favour of third parties who raised illegal structures over the land while ULC proceedings are pending before the competent authority. As such the 1st respondent has treated the land as vacant land u/s 2(q) of ULC Act. P.Mallaiah, T.Raj Lingam, A.Mallaiah and A.Durgaiah have filed declarations in Form-I u/s 6(1) of ULC Act in respect of lands held by them in S.Nos.124, 130, 131 and 159 of Lalaguda village, Marredpally Mandal, Hyderabad admeasuring Ac.12-37 guntas. The competent authority after considering the objections of the declarants passed an order u/s 8(4) of the Act on 25.8.1990. None of the original declarants chose to question the proceedings which went up to the stage of 10(3) of the ULC Act and thereby order declaring the declarants as surplus holders reached finality. After issuing notice u/s 10(5) of ULC Act on 9.12.1991, the declarants have filed appeals before the Chief Commissioner of Land Administration. The appeals filed by them ended in dismissal by an order dated 2.7.2002. The land in S.No.124 of Lalaguda is within the municipal limits of Hyderabad. Though the land in S.No.124 is classified as an agricultural land, the declarants changed its use and converted into plots and sold the plots to third parties. Therefore, the competent authority treated the land as vacant land within the meaning of Sec.2(q) of ULC. The declarants have filed application in Form No.5 u/s 21 of ULC Act seeking for permission to construct houses for weaker sections. Except filing Form-5, they did not choose to place on record any other documents. The sale agreements, if any, entered by the declarants with the petitioner-society is only after the commencement of ULC Act and as such the alienations in favour of the petitioner-society are not legal and valid. The said sale transaction is contrary to Sec.5(3) and 10(4) of the ULC Act. The petitioner society has not made any

application for exemption under G.O.Ms.No.136, dated 28.1.1981. Third parties who raised structures in the land have approached 1st respondent seeking regularization of their possession under G.O.Ms.No.455, dt.29.7.2002. The petitioner-society has never submitted such representation and as such the relief sought for by the petitioner-society cannot be granted.

9. The petitioner-society also filed reply affidavit. It is stated in the reply affidavit that sale deed could not be immediately obtained from the vendors since the vendors suppressed the fact of a suit for declaration of title filed against them by Mahabubuddin Khan and two others. Previous history of the litigation between Mahabubuddin khan and the vendors of the petitioner-society has been detailed. It is suffice to refer paras 10 and 11 of the reply affidavit and they read as under:

> " 10. As regards the locus standi of the petitioner which is lawful purchaser under agreement of sale coupled with GPA, I submit they had sufficient interest to question the illegal orders which effect them under section 2(1) of the Urban Land Ceiling Act, the word "to hold" is defined as to mean (1) to own such land (2) to possess such land…….under an irrevocable power of attorney u/s 8 (3) Read with R-5 (2) they are also entitled for notice and hearing and communication of order as persons interested in possession. Otherwise they will be injuriously affected. Hence, they have locus standi to file the Writ Petition.
>
> 11. I submit that Section 2(q)(1) of the ULC Act excluded land on which construction of a building is not permissible under Building Regulation from the computation of the vacant land. As per HUDA Zoning Regulation of 1981 Regulation 6.31 restricts the permissible user only to those be according to the development plan. Regulation 6.302 prohibits the contrary use. Section 15 of the UDA also prohibits. Hence, using of the land as building site is prohibited and therefore it does not become vacant land within the meaning of Sec.2(q)(1) of ULC Act. The vendors of the petitioner with malafide intention to defeat the agreement of sale with the petitioner later transferred into a part of the land for raising huts and with fictitious municipal house numbers they executed sale deeds, in favour of the non-official respondents, who are now impleaded. It does not make the land into vacant land within the meaning of the Act."

10. Heard learned counsel appearing for the petitioner- society, learned Government Pleader for Assignment appearing for respondents 1 and 2, learned Government Pleader for Revenue appearing for respondents 3 and 4 and learned counsel appearing for respondents 5 to 14.

11. The principal contention of the learned counsel appearing for the petitioner-society is that the land in S.No.124 cannot be treated as vacant land within the meaning of Sec.2(q) of the ULC Act. He further submits that the petitioner- Society being a irrevocable power of attorney from the landholders comes within the meaning of "to hold" as defined in Sec.2(l) of ULC Act and therefore, is an aggrieved party and so the petitioner-society is entitled to challenge the proceedings of the 1st and 2nd respondents. In support of his submissions, reliance has been placed on the decision of our High Court in STATE OF A.P. v. SMT.A.BHARATHI and the decision of Supreme Court in STATE OF KARNATAKA v. SHANKARA TEXTILE MILLS LTD. and GOVT. OF A.P. v. H.E.H., THE NIZAM, HYDERABAD. In the first cited case, a Division Bench of our High Court held that the phrase "to hold" connotes two concepts i.e., physical possession or legal title to the vacant land and that both the concepts stand attracted to the concept 'hold' under the Land Ceiling Act. In the cited case, on the date of the ULC Act coming into force, the vendor of the writ petitioner therein has parted with the possession of the land under an agreement of sale and subsequently executed registered sale deed, after issuing the statutory notice under section 26 of ULC Act. Coming to the facts of the case on hand, the purchase of land by the petitioner-society under agreements of sale is after the ULC Act came into force. No statutory notice has been issued by the landholders to the competent authority as contemplated under section 26 of ULC Act before transfer of land in favour of the petitioner-society. Therefore, the cited decision has no application to the facts of the case on hand. In the second cited case, the Supreme Court while dealing with Karnataka Land Revenue Act, 1964 has held that in the absence of permission for conversion of agricultural and non-agricultural land mere non-user of the land for agricultural purposes or purposes subservient thereto or user for non-agricultural purpose would not have the effect of converting the land into non-agricultural land. Much emphasis has been laid by learned counsel on para 9 of the judgment, which reads as under:

" **9.** THUS the High Court has proceeded on the basis that there is no specific finding regarding the nature and usage of the land as agricultural and hence, the Special Deputy Commissioner could not treat it to be an agricultural land merely on account of the fact that permission for conversion of the land under Sec. 95(2) of the Revenue Act was sought (but admittedly not given). Secondly, it has proceeded on the footing that the land in question does not satisfy any of the characteristics as required under the definition of the 'land' in Sec. 2(18) of the Act, i.e., Karnataka Land Reforms Act investing the authorities with the jurisdiction to take proceedings under Section 79-B of the Act. We are afraid that the High Court has misread the facts on record. The consistent stand taken by the authorities is that the land was never converted for non-agricultural use as required by the provisions of S. 95(2) of the Revenue Act. The mere fact that at the relevant time, the land was not used for agricultural purpose or purposes subservient thereto as mentioned in S. 2(18) of the Act or that it was used for non-agricultural purpose, assuming it to be so, would not convert the agricultural land into a non-agricultural land for the purposes either of the Revenue Act or of the Act, viz., Karnataka Land Reforms Act. To hold otherwise would defeat the object of both the Acts and would in particular, render the provisions of Sec. 95(2) of the Revenue Act, nugatory. Such, an interpretation is not permissible by any rule of the interpretation of statutes. What is further, the respondent-company had itself filed a declaration under S .79B(2)(a) of the Act stating therein that the entire disputed land was agricultural land and had claimed exemption from the provisions of the said S. 79-B under S.109 of the Act on the ground that the land was mortgaged to the Mysore State Financial Corporation. We are, therefore, unable to agree with the view taken by the High Court on the point."

Reverting to the facts of the case on hand, the petitioner-society purchased the lands from the declarants for the purpose of house plots to its members. The very purpose for which the lands have been purchased under agreements of sale from the landholders makes it clear that it is no more an agricultural land and thus it is a "vacant land" within the meaning of the provisions of ULC Act. The facts in the case on hand and the facts in the cited case are distinct and therefore, the proposition of law laid down in the cited case is of no help to the petitioner. In the third cited decision, the Supreme Court held that a party who purchased property under registered conveyance deed from the declarant after draft statement was served u/s 8 of ULC Act has a right to file an appeal. The cited decision has no application to the facts of the case on hand since it is not the case of the petitioner-society that it purchased the land under registered conveyance deed after the draft statement was served on the landholders.

12. Learned Government Pleader for Assignment appearing for respondents 1 and 2 submits that the land holders change the use of the land from agriculture to non-agriculture and indeed the petitioner-society purchased the land for providing house plots to its members and, therefore, the petitioner-society cannot be permitted to contend that the land is not a vacant land within the meaning of Sec.2(q) of ULC Act.

13. The primary object of the ULC Act was to prevent the concentration of Urban land in the hands of a few persons and speculation and profiteering therein and to bring about an equitable distribution of land in urban agglomeration to subserve the common good.

14. In STATE OF A.P. v. N.AUDIKESAVA REDDY the Supreme Court held as under:

> " 12. THE observations that the authorities by their subsequent action after 17/02/1976 cannot alter or introduce the master plan which has the effect of increasing the area of excess vacant land do not represent the correct view of law. The aforesaid explanation to Section 6 (1), inter alia, provides that where any land, not being vacant land, situated in a State in which this Act is in force has become vacant land by any reason whatsoever, the date on which such land becomes vacant land would be the date of the commencement of the Act as regards such land.
>
> 13. DEVELOPMENT and town planning are ongoing processes and they go on changing from time to time depending upon the local needs. That apart, the definition of the "master plan" in Section 2 (h) is very significant. It reads as under :
>
> "2(H) 'master plan', in relation to an area within an urban agglomeration or any part thereof, means the plan (by whatever name called) prepared under any law for the time being in force or in pursuance of an order made by the State Government for the development of such area or part thereof and providing for the stages by which such development shall be carried out."
>
> THE above provision, inter alia, contem-plates the master plan prepared under any law for the time being in force for development of an area. The plan shall also provide for the stages by which such development shall be carried out. It is evident from the aforesaid definition of master plan that it takes in view any plan prepared even subsequent to the coming into force of the Act. Further, the explanation to Section 6 (1), as noticed above, very

significantly provides that every person holding vacant land in excess of the ceiling limit at the commencement of the Act shall file a statement before the competent authority and "the commencement of the Act" under Clause (2) would be when the land becomes vacant for any reason whatsoever. Therefore, the date of commencement of the Act in a case where the land, which was not vacant earlier, would be the date on which such land becomes vacant land. It, thus, contemplates a situation of land, not being vacant, becoming vacant due to preparation of a master plan subsequent to 17/02/1976. Further, the provisions of the Act require filing of a statement under Sections 6, 7, 15 and 16 from time to time as and when land acquires the character of a vacant land. Obligation to file statement under the Act arises when a person comes to hold any vacant land in excess of the ceiling limit, which date necessarily may not be 17/02/1976. It would all depend on the facts and circumstances of each case.

14. ACCORDINGLY, we hold that the master plan prepared as per law in force even subsequent to enforcement of the Act is to be taken into consideration to determine whether a particular piece of land is vacant land or not and, to this extent, Atia Begum is not correctly decided."

15. Section 2(q) of ULC Act defines vacant land and it reads as under:

" 2(q) "vacant land", means land, not being land mainly used for the purposes of agriculture, in an urban agglomeration, but does not include-

i. *land on which construction of a building is not permissible under the building regulations in force in the area in which such land is situated;*

ii. *in an area where there are building regulations, the land occupied by any building which has been constructed before, or is being constructed on, the appointed day with the approval of the appropriate authority and the land appurtenant to such building; and*

iii. *in an area where there are no building regulations, the land occupied by any building which has been constructed before, or is being constructed on, the appointed day and the land appurtenant to such building:*

Provided that where any person ordinarily keeps his cattle, other than for the purpose of dairy farming or for the purpose of breeding of live-stock, on any land situated in a village within an urban agglomeration (described as a village in the revenue records), then,

so much extent of the land as has been ordinarily used for the keeping of such cattle immediately before the appointed day shall not be deemed to be vacant land for the purposes of this clause."

16. Much emphasis has been laid by learned counsel appearing for the petitioner-society that the land has been classified partly for agriculture and partly for water body and therefore it cannot be treated as a vacant land. It has come on record that the petitioner-society purchased the land under agreements of sale for providing house plots to its members. The purpose for which the petitioner-society purchased the land can be known from the writ affidavit. I deem it appropriate to refer para 1 of the writ affidavit and it is thus:

" I am the President of the petitioner-society and as such I am well acquainted with the facts of the case. The society is registered under A.P. Cooperative Societies Act with the objects of purchase, acquire land, develop the same and provide house sites to its members."

The purpose for which the petitioner-society purchased the land is evident from the writ affidavit and it is for providing house plots to its members. Even respondents 5 to 14 also claim to have purchased the house plots from the landholders under registered documents for the purpose of constructing dwelling houses. A similar question came up for consideration before a Division Bench of this Court in S.SULAKSHNA BAI v. STATE OF A.P wherein it has been held that when the land in question ceases to be an agricultural land, it assumes the character of vacant land and therefore the owner would be under a legal obligation to make a declaration under Sec.6 of ULC Act. The question for consideration in the cited decision was whether the land certified to be agricultural land on the date of commencement of the Urban land (Ceiling and Regulation) Act, 1976 would continue to retain its character as agricultural land even after it was divided into house sites and sold? While answering the question, the Division Bench held as follows:

" The Act came into force from 17.2.1976. The definition of 'urban land' under Section 2(o) of the Act, no doubt excludes lands which are mainly used for the purpose of agriculture. A 'vacant land' is

> defined by Section 2(q) of the Act as and not being land mainly used for purpose of agriculture, in an urban agglomeration. Sec.3 of the Act enjoins that with effect from the date of commencement of the Act, no person shall be entitled to hold vacant land in excess of the ceiling limit. In respect of city of Hyderabad the ceiling limit fixed is 1000 square meters. The land which was certified to be an agricultural land, when the Act came into force, could not continue to retain its identity as agricultural land even after its user was changed. It would not be treated as urban land so long as it was mainly used for the purpose of agriculture. When once the user was changed, it would become automatically vacant land within the meaning of Sec.2(q) of the Act."

17. In view of the settled proposition of law, I do not see any substance in the contention of the learned counsel appearing for the petitioner-society that the land in question is not a vacant land within the meaning of Sec.2(q) of ULC Act. Therefore, I find that this writ petition is devoid of merits and the same is liable to be dismissed.

18. Accordingly, this writ petition is dismissed. No costs.

Dated: 18-10-2005. (B.Seshasayana Reddy,J)

tnb

THE HONOURABLE SRI JUSTICE

B.SESHASAYANA REDDY

WRIT PETITION NO.8102 OF 2003

DISPOSED OF ON 18-10-2005